

REMARKS

After entry of this Amendment, claims 1-10 are pending in the application.

The Office Action of May 1, 2008 has been received and carefully considered.

As a result this Amendment is being submitted. It is submitted that, as a result of this action, all bases of rejection and objection are traversed and overcome. Reconsideration is, therefore, respectfully requested. It is submitted that the present action places the application in a condition suitable for allowance. Applicants acknowledge the duty to submit supplemental reissue declarations in this proceeding and will do so upon indication of allowable subject matter and notice from the Examiner that such Declaration will be necessary.

The Applicants thank Examiner Canfield for the courtesies extended to Applicants' attorney, Denise M. Glassmeyer during the interview conducted September 9, 2008 at the USPTO. During that interview, the cited references were discussed in view of the claims currently at issue. In view of that interview, the Applicants attorney indicated that the Applicants would submit a Supplemental Amendment presenting additional amendments to the claims.

During the interview the French reference was specifically discussed. The Examiner indicated that a translation of this reference would be ordered and made of record in the prosecution file. It is noted that the French reference is directed to a cast concrete construction element or "house angle" made of reinforced concrete that includes grooves designed to hold plates in place and to define a space or void that can be filled with cast concrete.

The arguments and observations presented in the initial Amendatory response are reiterated in this Supplemental response. The Examiner has indicated that the amendments filed 09/25/06, 02/21/07 and 04/18/07 contain proposed claims that do not comply with the pertinent provisions governing the manner of making amendments in reissue applications. Every effort has been made to present the claims in proper form in this submission. It is believed that this submission constitutes a supplemental paper correctly amended the reissue application. However, if additional documentation is required, the Examiner may contact the Applicants' attorney and make such request. Such papers will be promptly submitted.

The Specification is objected to for failing to provide proper antecedent basis for the term “detent”. It is believed that this objection has been addressed in view of the presently amended claims.

Rejections under Section 102(b)

Claims 1, 2, 4-7, 9 and 10 are rejected under 35 USC 102(b) as being anticipated by US 4,964,252 to Guliker. The Examiner indicates that member 14 of Guliker has all of the claimed structural features and inherently has insulating qualities. The Examiner indicates that the member has all of the elements of the claimed structure member and is inherently capable of use as a corner post.

Claims 1, 2, 4-7, 9 and 10 are rejected under 35 USC 102(b) as being anticipated by US 4,964,252 to French Patent 572, 198 (the French reference) for the reasons outlined in the most recent Office Action at pages 3-4.

The various claims will be discussed in view of these two rejections. For purposes of this discussion, direct claim language will be presented in quotations. Language added by reissue will be presented in underline and color, with previously presented language set forth in red and currently presented language presented in blue. Italicized parenthesis are used where a word or phrase has been inserted for grammatical clarity in the discussion in the Remarks section.

Claim 1 is directed to “a support and insulating member for a corner post made of thin sheet material and used to enclose one corner of an external wall of a building”. [T]he corner post is “spaced from the external wall to define a longitudinally extending hollow space therebetween.” The “support and insulating member” includes “a single member formed from a single homogeneous piece having first and second longitudinally extending portions with first and second flanges respectively.¹” The “first portion” lies “in a first plane angularly disposed with respect to the second portion lying in a second plane, wherein said first and second longitudinally extending portions have lengths adapted for corresponding to the length of the corner of the building.” The “single member defines a cornered inner surface adapted for contacting the building and a spaced apart cornered outer surface substantially parallel to said cornered inner surface and defining a first cross-sectional thickness, (and) the spaced apart outer

surface (is) adapted for contacting the corner post. Support for the term adapted for has been added to provide grammatical clarity to the claims. Specification support for the term the addition of the term “first cross sectional thickness” is derived from the drawing figures.

“The first flange (lies) in the first plane and (extends) outwardly from said first portion a predetermined distance and (extending) (extends) continuously along the entire length of said first portion and from said cornered inner surface radially outwardly.” The “second flange (lies) in the second plane and (extends) extending outwardly from said second portion a predetermined distance and (extends) extending continuously along the entire length of said second portion, and from said cornered inner surface radially outwardly.”

The “first and second flanges are positioned and extend from the respective cornered inner surfaces”. “(E)ach flange (has) an inner surface contiguous and coplanar with the associated cornered inner surface.” Each flange “further (has) an opposed outer surface spaced apart from the inner surface defining a second cross-sectional thickness, wherein the second cross-sectional thickness is less than the first cross-sectional thickness”. In the device as set forth in claim 1 the spaced apart cornered outer surface is flat and planar (Emphasis added).

It is submitted that the French reference fails to teach or suggest this orientation of the flange. Furthermore it is submitted that a careful reading of the French reference will indicate that any variation of the orientation of the flanges as outlined in that reference would contravene the intent purpose and function of that reference and therefore; namely that the flange be positioned to hold plates in place to define a void space that can be filled with concrete material.. Thus the Applicants invention as set forth in claim 1 is not taught, anticipated or rendered obvious by the French reference.

The Applicants’ invention is further defined in claim 1 to specify that the “cornered outer surface defined by the first and second extending portions terminates in a angular edge”. The angular edge (has) a planar surface contiguously connected thereto, the planar surface oriented at an angle essentially perpendicular to the cornered outer surface proximate to the angular edge and essentially perpendicular to the opposed outer surface of the associated flange. Support for these features is found in the specification at drawing figures 1 and 3.

The Guliker reference is directed to a device having a pair of projection flange members on each respective edge. As such, the Guliker reference fails to teach or suggest the features set forth the Claim 1. Furthermore it is submitted that the flange members defining the cross-sectional forks as set forth and taught in the Guliker reference is a necessary feature in order to secure mating structural elements and that removal of one or more of the flanges from the structure disclosed in Guliker would eviscerate that disclosed structure and render it impractical for the purpose disclosed in that reference. Thus it is submitted that the Applicants' invention as set forth in claim 1 is not taught, anticipated or rendered obvious over the cited references.

Claims 2 and 4 depend from claim 1 to contain all of the limitations found therein. By dependency, it is submitted that the Applicants' invention as set forth in claims 2 and 4 is not taught, anticipated or rendered obvious for the reasons discussed previously in conjunction with claim 1.

The invention set forth in claim 5 is directed to "insulating support" that comprises "a single member formed from a single homogeneous piece having first and second portions angularly disposed from each other, said first and second portions defining a cornered inner surface and a cornered outer surface generally parallel to said cornered inner surface having a first cross-sectional thickness." Support for the first cross-sectional thickness is found in the drawing figures. The single homogeneous piece member (has) first and second flanges extending outwardly from the first and second portions respectively, said first and second flanges extending continuously along an entire length of the first and second portions." Furthermore "the first and second flanges have inner flange surfaces that extend continuously from the inner surface of the respective first and second portions and are coplanar with adjacent surface of the respective portion". The "respective flange(s) (have) an opposed outer surface generally parallel to the inner flange surface having a second cross-sectional thickness, wherein the second cross-sectional thickness is less than the first cross-sectional thickness and wherein the outer surface of the respective flanges is not covered by any portion of the single member." In claim 5, the cornered outer surface of the member is defined by a pair of flat planar surfaces joined at a corner junction (Emphasis added). Support for these claim elements are found in the drawing figure.

It is submitted that the Guliker reference fails to teach or suggest that the flange members are not covered by other elements of the structural device disclosed in that reference. Exposure as defined in the Applicants' invention as set forth in claim 5 would compromise the structure and intended function of the device disclosed therein. Furthermore it can be appreciated that the flange elements disclosed in Guliker have a tapered cross-section rather than the essentially parallel surfaces disclosed and claimed in the Applicants' invention. For these reasons, it is submitted that the Guliker reference does not anticipate the claimed invention as it lacks elements set forth in claim 5.

It is submitted that the French reference lacks any teaching or suggestion of the positioning of the flanges as defined in claim 5. Orientation of the flanges as outlined in the present invention set forth in claim 5 would destroy the functionality of the French reference for its stated purpose – i.e. holding other structural elements in place relative to the corner member disclosed therein. Thus it is submitted that the Applicants' invention as set forth in claim 5 is not taught, anticipated or rendered obvious by the French reference.

Claim 6 is directed to a “support and insulating member for supporting and insulating a corner post”. The “corner post (is) made of thin sheet material used to enclose one corner of an external wall of a building (and is) spaced from the external wall to define a longitudinally extending hollow space therebetween”. The “support and insulating member (comprises) a single member formed of a material uniform throughout, the single member having first and second longitudinally extending portions with first and second flanges respectively”. The “first portion (lies) in a first plane angularly disposed with respect to the second portion lying in a second plane (with) the first and second longitudinally extending portions have lengths adapted for corresponding to the length of the corner of the building and each have a first cross- sectional thickness”. (Emphasis added)

The “single member defines a cornered inner surface adapted for contacting the building and a spaced apart cornered outer surface generally parallel to the cornered inner surface adapted for contacting the corner post, the first flange lying in the first plane and extending outwardly from the first portion a predetermined distance and extending continuously along the entire length of the first portion and from and coplanar to the cornered inner surface radially outwardly, and the second flange lying in the second plane and extending

outwardly from the second portion a predetermined distance and extending continuously along and coplanar with the entire length of the second portion and from the cornered inner surface radially outwardly, wherein the first and second flanges each have a cross-sectional thickness, the cross sectional thickness of each respect flange being less than the first cross-sectional thickness and wherein the respective first and second flanges are not covered by other elements of the single member”. In claim 6, the cornered outer surface is composed of two flat planar surfaces joined at a corner joint, the outer surface (Emphasis added). Support for the added features is found in the drawing figures.

It is submitted that the Guliker reference fails to teach or suggest that the flange members are not covered by other elements of the structural device disclosed in that reference. Exposure as defined in the Applicants' invention as set forth in claim 6 would compromise the structure and intended function of the device disclosed therein.

It is submitted that the French reference lacks any teaching or suggestion of the positioning of the flanges as defined in claim 6. Orientation of the flanges as outlined in the present invention set forth in claim 6 would destroy the functionality of the French reference for its stated purpose – i.e. holding other structural elements in place relative to the corner member disclosed therein. Thus it is submitted that the Applicants' invention as set forth in claim 6 is not taught, anticipated or rendered obvious by the French reference.

Claims 7 and 9 depend from claim 6 to contain all of the limitations found therein. By dependency, it is submitted that the Applicants' invention as set forth in claims 7 and 9 is not taught, anticipated or rendered obvious for the reasons discussed previously in conjunction with claim 6.

Claim 10 is directed to an “insulating support comprising a single member formed of a material uniform throughout and having first and second portions angularly disposed from each other, the first and second portions defining a cornered inner surface and a cornered outer surface substantially parallel to the cornered inner surface defining a first thickness, the single member having first and second flanges extending outwardly from the first and second portions respectively, the first and second flanges extending continuously along an entire length of the first and second portions, wherein the flanges extend continuously from the inner surface of the respective first and second portions, the flanges each composed of an inner

surface and an opposed outer surface disposed essentially parallel to the inner surface defining a second thickness, wherein the inner surface of the respective flanges is contiguous to and coplanar with the inner surface of the respective first or second portion and wherein the second thickness is less than the first thickness. (Emphasis added)

It is submitted that the French reference lacks any teaching or suggestion of the positioning of the flanges as defined in claim 10. Orientation of the flanges as outlined in the present invention set forth in claim 10 would destroy the functionality of the French reference for its stated purpose – i.e. holding other structural elements in place relative to the corner member disclosed therein. Thus it is submitted that the Applicants' invention as set forth in claim 10 is not taught, anticipated or rendered obvious by the French reference.

The Guliker reference is directed to a device having a pair of projection flange members on each respective edge. As such, the Guliker reference fails to teach or suggest the features set forth the Claim 10. Furthermore it is submitted that the flange members defining the cross-sectional forks as set forth and taught in the Guliker reference is a necessary feature in order to secure mating structural elements and that removal of one or more of the flanges from the structure disclosed in Guliker would eviscerate that disclosed structure and render it impractical for the purpose disclosed in that reference. Thus it is submitted that the Applicants' invention as set forth in claim 10 is not taught, anticipated or rendered obvious over the cited references.

Rejection of claims under 35 USC 103(a)

Claims 3 and 8 stand rejected under 35 USC 103 (a) as being unpatentable over the French reference. The Examiner contends that that substitution of polystyrene for the cement material disclosed in French reference due to inherent insulation properties would have been obvious to the skilled artisan. . The Applicants respectfully disagree. The French references discloses and has flanges configured to support cross tie building materials within the hollow defined the outwardly oriented flanges filled with a cement type material. As indicated in the official translation of the French reference now in the record in this matter, the corner angle defined in the French reference is made of cement-type material and is configured to hold pre-plastered plates in place to define a void space that can be filled with a cement type material.

The physical characteristics of polystyrene indicate that it has limited ability to withstand the sideway strain that would be imparted if such plates were attached to the polystyrene corner structure set forth in the claims. Thus the skilled artisan would consider polystyrene to be an unlikely choice for the substitution with the cement material disclosed in the French reference.

Additionally, the Applicants' device as defined in claims 3 and 8 specify that the flanges are inwardly oriented relative to the corner member. This would render positioning capture and orientation of any cross tie members difficult, if not impossible. Thus the only possible way to support a conclusion that the Applicants' invention as set forth in claims 3 and 8 is obvious to the skilled artisan over the French reference would be for the artisan to have possession of the present disclosure and work backwards from there. It is submitted that this is impermissible hindsight and that the Applicants' invention as set forth in claims 3 and 8 is not taught, anticipated or rendered obvious by the French reference.

Claims 1-10 stand rejected under 35 USC 103(a) as being obvious in view of Wallentin. The Examiner contends that the Wallentin reference discloses a corner member 13 formed of a "cementitious or otherwise suitable plastic material". (Suitable plastic materials are defined in the Wallentin specification as preferably being reinforced with a fibrous material such as asbestos.)

The Examiner indicates that the Wallentin structure has all of the structural elements except that it is made of plural sections set end to end. Construction from a unitary piece would have been obvious as a single unit would yield no unexpected result. It should be noted that the reference recognizes the importance of the multiple pieces resulting in a continuous bead and provides an intricate subassembly structure to accomplish this in the final assembly thereby directing the skilled artisan away from the butt joint structure that the Examiner considers obvious in view of the teaching of Wallentin.

At the outset, it should be noted that the Wallentin reference has an outer surface defined with an outwardly flaring lower edge (see drawing figures) that repeats for each segment that is joined together to form the corner assembly defined in Wallentin. In contrast, the invention as set forth in the various claims at issue has a flat, planar outer surface. It is submitted that the Wallentin reference teaches the necessity of the flared surface in order to correspond to the single courses attached and secured to the contiguous side walls. Thus the flares are a

required feature of the device disclosed in Wallentin. It is submitted that the reference teaches the skilled artisan that the omission of such shingle corresponding flares would be undesirable. Thus the Wallentin reference does not support the Examiners conclusion that the claims at issue are obvious.

Once again, it is submitted that the disclosure and teaching of the present application is a necessary element in coming to the conclusions reached in the obviousness rejection at issue. Turning first to the structure, it should be noted that element 16 as disclosed in Wallentin is configured to project outwardly beyond associated shingles to “cover their edges and form a protection against rain and the like” (Wallentin Col 2 lines 15-17). Thus the Wallentin reference lack any teaching or suggestion of structure such as: a “spaced apart cornered outer surface substantially parallel to said cornered inner surface and defining a first cross-sectional thickness ” (See claim 1); or “first and second portions defining a cornered inner surface and a cornered outer surface generally parallel to said cornered inner surface having a first cross-sectional thickness” (See claim 5); or “the single member defines a cornered inner surface adapted for contacting the building and a spaced apart cornered outer surface generally parallel to the cornered inner surface” (See claim 6); or “first and second portions defining a cornered inner surface and a cornered outer surface substantially parallel to the cornered inner surface defining a first thickness” (See claim 10).

This is also the case with regard to claim 3. Claim 3 is directed to the device discussed in the preamble of claim 1. The support and insulating member comprises a “single member having first and second longitudinally extending portions (with) the first portion lying in a first plane angularly disposed with respect to the second portion lying in a second plane”. The “first and second longitudinally extending portions have lengths adapted for corresponding to the length of the corner of the building”. The “single member defines a cornered inner surface adapted for contacting the building and (also defines) a spaced apart cornered outer surface parallel to said cornered inner surface adapted for contacting the corner post, wherein in the cornered inner surface and the cornered outer surface define a first thickness and wherein the cornered outer surface is defined by a pair of flat planar surfaces that are joined at a corner junction.”. (Emphasis added). Support for the limitation pertaining to thickness and the flat planar surface is found in the drawing figures.

Amdt. Dated October 9, 2008

Reply to Office Action dated November 21, 2006

The device as set forth in claim 3 also includes “a single first support member flange lying in the first plane and extending outwardly from said first portion a predetermined distance and extending outward from the cornered inner surface continuously along the entire length of said first portion and from said cornered inner surface radially outwardly; and

.....
“a single second support member flange lying in the second plane and extending outwardly from said second portion a predetermined distance and extending outward from the cornered inner surface continuously along the entire length of said second portion and from said cornered inner surface radially outwardly”. (Emphasis added) Support for the term “single” can be found in the drawing figures. Thus the device as outlined in claim 3 is not taught, anticipated or rendered obvious for the reasons just articulated. For this reason it is submitted that the Applicants’ invention as set forth in independent claims 1, 3, 5, 6, 9 and 10 and associated dependant claims is not taught, anticipated or rendered obvious by the Wallentin reference.

The Applicants’ also respectfully question the assumption that polystyrene is equivalent to the “cementitous or other plastic material” taught in Wallentin. The Examiner has proffered no reference that supports the conclusion that such materials are the equivalent to polystyrene nor that the aforementioned materials possess insulative characteristics. Thus at least with regard to claims 2, 3, 4, 7 and 8, it is submitted that the Wallentin reference fails to support the obviousness rejection under 35 USC 103(a).

Amdt. Dated October 9, 2008

Reply to Office Action dated November 21, 2006

It is respectfully submitted that this Amendment traverses and overcomes all of the Examiner's objections and rejections to the application as originally filed. It is further submitted that this Amendment has antecedent basis in the application as originally filed, including the specification, claims and drawings, and that this Amendment does not add any new subject matter to the application. Reconsideration of the application as amended is requested. It is respectfully submitted that this Amendment places the application in suitable condition for allowance; notice of which is requested.

If the Examiner feels that prosecution of the present application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the Applicant's attorney at the telephone number listed below.

Respectfully submitted,

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